

AMENDED IN ASSEMBLY JUNE 26, 1996

AMENDED IN ASSEMBLY JUNE 5, 1996

AMENDED IN SENATE APRIL 8, 1996

**SENATE BILL**

**No. 1923**

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**Introduced by Senator Thompson**

February 23, 1996

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An act to amend Sections 24045.6 and 25505 of, to add Section 25503.30 to, and to add and repeal Section 23817.8 of, the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1923, as amended, M. Thompson. Alcoholic beverages: licenses: retail off-sale beer and wine.

The Alcoholic Beverage Control Act prohibits applications for and the issuance of original retail off-sale beer and wine licenses in certain cities and counties where the number of licenses exceeds certain limits, except as provided. This restriction remains in effect until January 1, 1998.

This bill would permit the application for and the issuance of a retail off-sale beer and wine license to a licensed beer and wine wholesaler, even though the number of licenses exceeds the specified limits, if certain conditions are met. This provision would remain in effect only until January 1, 1998.

The Alcoholic Beverage Control Act authorizes the issuance of a special temporary on-sale or off-sale wine license to a nonprofit corporation, as specified, in accordance with,

among other things, a requirement that such a license shall be issued for a period not exceeding 2 days.

This bill would extend that period to 15 days and provide that in the event the license is issued for a period exceeding 2 days, it shall be used solely for retail sales in conjunction with an identifiable fundraising event, as provided.

The Alcoholic Beverage Control Act prohibits any on-sale licensee, or any officer, director, employee, or agent of the licensee from holding any ownership or other interest, directly or indirectly, in any manufacturer's, winegrower's, rectifier's, importer's, or wholesaler's license, the business conducted under that license, or the property used in the business, except as provided.

This bill would provide an additional exception for a winegrower whose principal place of business is located in Napa County and who meets ~~specified~~ *certain* other requirements.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 23817.8 is added to the Business  
2 and Professions Code, to read:  
3 23817.8. (a) Notwithstanding the moratorium  
4 provision of Section 23817.5, the department may  
5 approve an application for an off-sale beer and wine  
6 license by a licensed beer and wine wholesaler, even  
7 though the applicant premises will be located in an area  
8 having an undue concentration of off-sale beer and wine  
9 licenses, as provided in paragraph (3) of subdivision (a)  
10 of Section 23958.4, provided each of the following  
11 conditions are met:  
12 (1) The off-sale beer and wine license shall be held at  
13 the same location as the beer and wine wholesaler license.  
14 (2) The off-sale beer and wine license shall be  
15 restricted to sales solicited and accepted by direct mail,  
16 telephone, or on-line computer. The off-sale beer and

1 wine license shall not be used for operations conducted  
2 from a retail store open to the public.

3 (b) The department may impose reasonable  
4 conditions on a licensee as may be needed in the interest  
5 of the public health, safety, and welfare regarding  
6 signing, training for responsible beverage sales, hours,  
7 and mode of sale.

8 (c) This section shall remain in effect only until  
9 January 1, 1998, and as of that date is repealed, unless a  
10 later enacted statute, that is enacted before January 1,  
11 1998, deletes or extends that date.

12 SEC. 2. Section 24045.6 of the Business and  
13 Professions Code is amended to read:

14 24045.6. (a) The department may issue a special  
15 temporary on-sale or off-sale wine license to any  
16 nonprofit corporation which is exempt from payment of  
17 income taxes under Section 23701d of the Revenue and  
18 Taxation Code and Section 501(c)(3) of the Internal  
19 Revenue Code of 1954 of the United States. An applicant  
20 for this license shall accompany the application with a fee  
21 of one hundred dollars (\$100).

22 (b) This special license shall only entitle the licensee  
23 to sell wine bought by, or donated to, the licensee. No  
24 such wine shall be sold at less than the minimum retail  
25 price therefor, established pursuant to this division.  
26 Notwithstanding any other provision of this division,  
27 licensees may donate or sell wine to a nonprofit  
28 corporation which obtains a special temporary on-sale or  
29 off-sale license under this section, provided the donations  
30 are not made in connection with a sale of an alcoholic  
31 beverage.

32 (c) This special license shall be issued for a period not  
33 exceeding 15 days. In the event the license under this  
34 section is issued for a period exceeding two days, it shall  
35 be used solely for retail sales in conjunction with an  
36 identifiable fundraising event sponsored or conducted by  
37 the licensee and all bottles of wine sold under this license  
38 shall bear a label prominently identifying the event. Only  
39 one special license authorized by this section shall be  
40 issued to any corporation in any 12-month period.

1 SEC. 3. Section 25503.30 is added to the Business and  
2 Professions Code, to read:

3 25503.30. (a) Notwithstanding any other provision of  
4 this division, a winegrower or one or more of its direct or  
5 indirect subsidiaries of which the winegrower owns not  
6 less than a 51 percent interest, who manufactures,  
7 produces, bottles, processes, imports, or sells wine and  
8 distilled spirits made from grape wine or other grape  
9 products only, under a winegrower's license or any other  
10 license issued pursuant to this division, or any officer,  
11 director, or agent of, or any person holding any interest  
12 in, those persons, may serve as an officer or director of,  
13 and may hold the ownership of any interest or any  
14 financial or representative relationship in, any on-sale  
15 license, or the business conducted under that license,  
16 provided that the following conditions apply:

17 (1) The winegrower's principal place of business is  
18 located in Napa County, the winegrower has been in  
19 continuous operation, although not necessarily under the  
20 same ownership, for more than 25 years, and the  
21 winegrower, directly or through its subsidiaries, produces  
22 more than 5,000,000 gallons of wine annually in this state.

23 ~~(2) The on-sale licensee, except for the holder of~~  
24 ~~on-sale general licenses for airplanes and duplicate~~  
25 ~~on-sale general licenses for air common carriers,~~  
26 ~~purchases all alcoholic beverages sold and served by the~~  
27 ~~on-sale licensee only from California wholesale licensees.~~

28 ~~(3) The number of alcoholic beverage items by brand~~  
29 ~~offered for sale by the on-sale licensee that are produced,~~  
30 ~~bottled, processed, imported, or sold by the licensed~~  
31 ~~winegrower or by the subsidiary of which the winegrower~~  
32 ~~owns not less than a 51 percent interest, or by any officer,~~  
33 ~~director, or agent of, or by any person holding any~~  
34 ~~interest in, those persons does not exceed 15 percent of~~  
35 ~~the total alcoholic beverage items by brand listed and~~  
36 ~~offered for sale by the on-sale licensee selling and serving~~  
37 ~~that alcoholic beverage.~~

38 *(2) Except in the case of a holder of on-sale general*  
39 *licenses for airplanes and duplicate on-sale general*

1 licenses for air common carriers, all of the following  
2 conditions are met:

3 (A) The on-sale licensee purchases all alcoholic  
4 beverages sold and served only from California wholesale  
5 licensees.

6 (B) The number of wine items by brand offered for  
7 sale by the on-sale licensee that are produced, bottled,  
8 processed, imported, or sold by the licensed winegrower  
9 or by the subsidiary of which the winegrower owns not  
10 less than 51 percent, or by any officer or director of, or by  
11 any person holding any interest in, those persons does not  
12 exceed 15 percent of the total wine items by brand listed  
13 and offered for sale by the on-sale licensee selling and  
14 serving that wine.

15 (C) None of the persons specified in subdivision (a)  
16 may have any of the interests specified in that subdivision  
17 in more than two on-sale licensees.

18 (b) The Legislature finds that it is necessary and  
19 proper to require a separation between manufacturing  
20 interests, wholesale interests, and retail interests in the  
21 production and distribution of alcoholic beverages in  
22 order to prevent suppliers from dominating local markets  
23 through vertical integration and to prevent excessive  
24 sales of alcoholic beverages produced by overly  
25 aggressive marketing techniques. The Legislature  
26 further finds that the exceptions established by this  
27 section to the general prohibition against tied interests  
28 must be limited to their express terms so as not to  
29 undermine the general prohibition, and the Legislature  
30 intends that this section be construed accordingly.

31 SEC. 4. Section 25505 of the Business and Professions  
32 Code is amended to read:

33 25505. No onsale licensee, or any officer, director,  
34 employee, or agent of ~~such~~ that licensee, shall hold any  
35 ownership or interest, directly or indirectly, in any  
36 manufacturer's, winegrower's, rectifier's, importer's, or  
37 wholesaler's license, the business conducted under ~~such~~  
38 that license, or the property used in the business.

39 The provisions of this section shall not apply to the  
40 holding by one person of a wholesaler's license and an

1 onsale license in a county with a population that does not  
2 exceed 15,000.

3 The provisions of this section shall not apply to the  
4 financial or representative relationship between a  
5 manufacturer, winegrower, manufacturer's agent,  
6 rectifier, distiller, bottler, importer, or wholesaler, or any  
7 officer, director, or agent of that person, and, except as  
8 otherwise specified, a person holding only one of the  
9 following types of licenses:

10 (a) Onsale general license for a bona fide club.

11 (b) Club license (issued under Article 4 (commencing  
12 at Section 23425) of Chapter 3 of this division).

13 (c) Veterans' club license (issued under Article 5  
14 (commencing at Section 23450) of Chapter 3 of this  
15 division).

16 (d) Onsale license for boats, trains, sleeping cars or  
17 airplanes, except as provided in subdivision (e), where  
18 the alcoholic beverages produced or sold by—~~such~~ that  
19 manufacturer, winegrower, manufacturer's agent,  
20 rectifier, bottler, importer, or wholesaler or any officer,  
21 director, or agent of—~~such~~ that person are not sold,  
22 furnished or given, directly or indirectly to the onsale  
23 licensee.

24 The provisions of this section shall not prohibit the  
25 leasing of property by an onsale licensee to a  
26 manufacturer, winegrower, rectifier, importer or  
27 wholesaler provided that the lease agreement is first  
28 approved by the department. The department shall  
29 approve the lease agreement unless it finds that the rental  
30 payable is not the fair rental value of the property or that  
31 the purpose of the lease is to violate any of the provisions  
32 of this chapter.

33 The provisions of this section shall not prohibit the  
34 holding of any ownership or interest by an onsale  
35 licensee, or any officer, director, employee, or agent of  
36 any ~~such~~ onsale licensee, in any winegrower's license,  
37 which winegrower manufactures, produces, bottles,  
38 processes, imports, or sells wine only, or in the business  
39 conducted under any ~~such~~ winegrower's license,  
40 provided the onsale licensee, or the officer, director,

1 employee, or agent thereof shall have entered into an  
2 undertaking approved by the department stating that the  
3 onsale licensee, or any such officer, director, employee, or  
4 agent of—~~such~~ *that* onsale licensee, will not sell pursuant  
5 to ~~such~~ *that* onsale license any wine manufactured,  
6 produced, processed, imported, or sold by the licensed  
7 winegrower for so long as the holding of the ownership or  
8 interest continues.

9 (e) Any and all of the licenses specifically enumerated,  
10 mentioned, or described in Section 25503.30, either singly  
11 or in combination.

12 SEC. 5. This act is an urgency statute necessary for the  
13 immediate preservation of the public peace, health, or  
14 safety within the meaning of Article IV of the  
15 Constitution and shall go into immediate effect. The facts  
16 constituting the necessity are:

17 In order to allow beer and wine wholesalers to sell beer  
18 and wine off-sale in a limited manner at the earliest  
19 opportunity, it is necessary that this act take effect  
20 immediately.